

READ & STEVENS, INC.

IBLA 85-423; IBLA 85-425

Decided July 15, 1986

Appeal from a decision by the New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases NM 54406 and NM 54994.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision, if disputed on appeal.

APPEARANCES: Norman L. Stevens, Jr., Vice President, and Joe Wigley, Land Manager, Read & Stevens, Inc., Roswell, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Read & Stevens, Inc. (Read & Stevens), appeals from two decisions by the New Mexico State Office, Bureau of Land Management (BLM), dated January 9, 1985, rejecting appellant's high bids of \$ 47.56 per acre for parcel 45, offered at a competitive oil and gas lease sale held August 25, 1982 (NM 54406; IBLA 85-423), and \$ 14.66 per acre for parcel 24, in a sale held October 27, 1982 (NM 54994; IBLA 85-425). BLM based its rejection of these bids on reports prepared by its Southwest Region Evaluation Team. Copies of these reports were submitted to appellant with the rejection decisions.

The January 9, 1985, decisions represent the second rejections of appellant's bids. BLM previously rejected the bids by decisions dated November 8, and December 22, 1982, because the bids had been found to be insufficient, based on BLM presale evaluations. Read & Stevens appealed the first rejection decisions to this Board. In Read & Stevens, Inc., 72 IBLA 390 (1983), the Board found the case records inadequate because they did not include presale evaluation values or the basis for BLM's rejections, although a rebuttal of

appellant's arguments was provided for parcel 24. The Board stated: "[W]e remand these cases to BLM for readjudication of appellant's bids. If the bids are rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so the Board can properly consider the issues in event of an appeal." Read & Stevens, Inc., supra at 394. ^{1/}

In support of its 1982 rejection of Read & Stevens' bid for tract 24, BLM had initially stated:

The pre-sale analysis for this parcel is based on comparative sales and an engineering estimate of the potential for recoverable hydrocarbons. A parcel abutting this tract and within this section received a successful high bid of \$ 3,002.50 in the oil and gas lease sale held on August 26, 1981. Both parcels have possible Morrow potential. A recent Morrow well came on production in May 1981 approximately 1/4 mile south of the parcel in sec. 7 of this township. In addition, there is a Hackberry Hill Pennsylvania well located approximately 3/4 mile to the west which has produced 4.3 billion cubic feet of gas. Our estimate of the fair market value (FMV) of this tract reflects the market conditions at the time of the sale and the current estimated potential for recoverable hydrocarbons. We use published sources for our information and derivations using standard estimation techniques.

The case record did not contain a statement in support of its 1982 rejection of Read & Stevens' bid for tract 45.

After remand, BLM reconsidered its previous decision and documented its reasons for bid rejection. The BLM Southwest Region Evaluation Team report, recommending rejection for tract 24, states:

The standard used in determining whether the bonus (cash bid) on a given tract is acceptable involves a comparison of the high bid to the government's estimate of the dollar value of the tract. If the high bid is substantially beneath the government's estimate of the dollar value of the tract then said bid is deemed to be unacceptable within the meaning of Section 17 of the Mineral Leasing Act. The government's estimated dollar value for tract 24 is \$ 629,257.50 [\$ 2,250 per acre]. The high bid, at \$ 4,100.00 [\$ 14.66 per acre] is substantially beneath the government's estimate. The government's estimate of dollar value for tract 24 was derived through a comparable sales analysis.

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^{1/} Due to the similarity of the issues presented, the appeals from BLM's second rejections of appellant's bids are again consolidated on appeal.

Tract 24 is located in section 6 of Township 22 South, Range 26 East, Eddy County, New Mexico. The most credible prior sale is of a parcel in the same Section immediately adjacent to tract 24.

The BLM report recommending rejection of appellant's bid for tract 45 states:

The standard used in determining whether the bonus (cash bid) on a given tract is acceptable involves a comparison of the high bid to the government's estimate of the dollar value of the tract. If the high bid is substantially beneath the government's estimate of the dollar value of the tract then said bid is deemed to be unacceptable within the meaning the Section 17 of the Mineral Leasing Act [30 U.S.C. § 226, as amended]. The government's estimated dollar value for tract 45 is \$ 558,940.00, [\$ 1,000 per acre]. The high bid, at \$ 26,583.19 [\$ 47.56 per acre], is substantially beneath the government's estimate. The government's estimate of dollar value for tract 45 was derived through a comparable sales analysis.

* * * * *

Tract 45 is in Section 4 of Township 24 South, Range 29 East (Eddy County). The most credible prior sales were in Sections 2 and 3 of the same township.

In addition, the case record contained memoranda from the Minerals Management Service (MMS), which list the comparable sales used to obtain the presale estimates for these tracts. 2/ Copies of these were forwarded to the appellant by the Board.

Tract Evaluation: Parcel No. 24; 10/27/82, KGS Sale
Date of Evaluation: 10/26/82

This parcel is a 279.67 acre tract located in Eddy County, New Mexico; being lots 3 and 4 and the SE/4NW/4, the E/2SW/4, and the N/2SE/4 of Section 6, T22S, R26E, NMPM. The known geological structure is currently unnamed; however, the area is sometimes referred to as the "Hackberry Hills" and/or the "Lancaster Spring" portion of the "Tatum" part of the "Permian Basin."

Production potential exists from more than one horizon in this area; however, the current "target" zones are those within

2/ As we noted in Read & Stevens, supra at 392, BLM is the successor to the onshore minerals functions of the MMS not relating to royalty management. 48 FR 8982 (Mar. 2, 1983).

the "Pennsylvanian" age depositional facies; i.e., "Morrow," "Atoka," "Strawn," etc. Ancient reef structures, beach sand stratigraphic pinch outs, and fault structure traps are the primary mechanisms for hydrocarbon entrapment within the "Pennsylvanian" age deposits. Proven "Pennsylvanian" production is present within a range of from one-eighth (1/8) mile to two (2) miles from the subject in the following well locations: (1) T22S, R25E, Sec. 1, SW/4SE/4; (2) T22S, R26E, Sec. 4, SE/4NW/4; (3) T22S, R26E, Sec. 7, NW/4NE/4; (4) T22S, R26E, Sec. 8, NE/4SE/4; and (5) T22S, R26E, Sec. 9, NE/4SW/4 (see map).

On the KGS sale for August 26, 1981, two tracts adjoining the subject and within the same section, sold to Amoco Production Company for a bonus amount of \$ 3,002.50 per acre. This sale is considered to be the best indication of the current fair market bonus value for the subject. Lease bonus prices in Eddy County decreased approximately 25% since 3/26/81; therefore, the bonus value of subject as of 10/26/82 is \$ 2,250.00 per acre or \$ 629,257.50 total.

Tract Evaluation: Parcel No. 45; 8/25/82; KGS Sale
Date of Evaluation: 8/24/82

This parcel is a 558.94 acre tract located in Eddy County, New Mexico; being lots 1, 2, 3, and 4 the S/2NW/4 and the S/2 of Section 4; T24S; R29E, NMPM. The known geological structure is unnamed, but locally the general area is referred to as the "Malaga Field" which is one of the many producing areas of the "Tatum" portion of the "Permian Basin."

Although there are several geological horizons in the area which have production potential, at this time the primary "target" is the "Morrow" formation. "Morrow" production is found in ancient reef structures, beach sand stratigraphic pinch-outs, and fault structure traps, to name a few. Proven "Morrow," together with "Delaware," production is present in: (1) the SE/4NW/4 of Section 10, (2) the SE/4SE/4 of Section 9, and (3) the SE/4NW/4 of Section 6 (see map).

Within the last calendar year there have been several comparable lease sale transactions within 2 miles of the subject that have received bonus bids over \$ 1,000.00 per acre. The two comparables that are most indicative of the value for this parcel are as follows (see map):

- A. T24S, R29E, Section 3, 5/25/82; 4/27/82; BLM to Superior Oil Company; \$ 1,138.89 per acre.
- B. T24S, R29, Section 2, All; 1/19/82; State of New Mexico to Superior Oil Company; \$ 1,680.00 per acre.

Because of time, location, and geologic parameters, the above sales indicate a current (8/25/82) fair market value for bonus bid for the subject tract of \$ 1,000.00 per acre or \$ 558,940.00 total.

In its statements of reasons for this appeal, Read & Stevens emphasizes the speculative nature of these leases. It asserts that its bids reflected fair market value, in view of its projection of market decline, which time proved correct. Appellant argues that the sales BLM considered are not comparable. As to parcel 45, Read & Stevens states that although a regional trend exists within one mile no specific drill site is justified. Appellant asserts that the closed "Morrow" wells, including one in the N 1/2 of Section 10, were plugged and abandoned after achieving uneconomic production. Appellant also finds the Delaware uneconomic due to high drilling and completion costs. Appellant states, "I think Exxon has certainly proven this in that they staked Delaware tests in Sections 34 & 33 and have since abandoned both without drilling. (Statement of Reasons for parcel 45, at page 2). Appellant maintains that a \$ 57.00 bid for nearby offset acreage did not account for market conditions and so was not comparable. Appellant adds, "Immediately to the east of this tract Exxon has let the N/2 of Section 3 expire without any drilling activity." (Statement of Reasons for parcel 45 at page 2).

As to parcel 24, Read & Stevens states:

As for the Amoco bid of \$ 3,002.00 per acre for offset acreage *
* * the passing of time has shown that Amoco has not staked any wells on this acreage and that their bid is probably way out of line even for "Boom Times" (1981). It is anticipated that this tract will expire December 1, 1986, without seeing any well activity whatsoever.

As for the proven "Pennsylvanian" production in this area, this parcel is separated from production to the south where an uneconomical well drilled by Latham and Barton in the NW/4NE/4, Section 7, is located and from production to the north where the Lario dry hole in the NE/4SW/4, Section 31, is located, leaving this tract to stand virtually on its own geologically.

(Statement of Reasons for parcel 24, at page 2).

[1] As this Board stated in Read & Stevens, Inc., supra, at page 392: The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b), [as amended, (1982)]; 43 CFR 3120.3-1 [now 43 CFR 3120.5]. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value

for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); William C. Welch, 60 IBLA 248 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

The Department is entitled to rely on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Dan Nelson, 85 IBLA 156 (1985); L. B. Blake, 67 IBLA 103 (1982). If the record indicates a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

The Board has repeatedly stressed the need for BLM to document the reasons for its determination in the record. Such was initially the case here. In Read & Stevens, *supra*, the records were initially found to be insufficient for the Board to determine the correctness of the BLM decisions or the merits of appellant's arguments. The Board stated that the records did not then reveal estimated minimum values for the parcels or sufficient factual data to support rejection of appellant's bids, set aside BLM's initial rejection, and remanded the cases to BLM for further consideration. Read & Stevens, *supra*.

BLM supplemented the record and affirmed its initial decisions, providing presale evaluation information for both parcels. After considering the entire record now before us, we find that BLM established a rational basis for its presale estimates. The BLM decision was based on the proximity of producing wells, comparable lease data and its presale evaluations of the value of the parcels. Therefore, appellant has an affirmative obligation to demonstrate its bids represent the fair market value and that the Government estimates were inaccurate. The Westlands Co., 83 IBLA 43 (1984). The Secretary or his delegate need not prove the bids are inadequate in order to support rejection decisions. ^{3/} A rejection is an exercise of the Secretary's discretion, and deference is given to such action if, in the public interest, the Secretary determines a bid to be for less than the Department's estimate of fair market value. The record need only be sufficient to establish that the decision was neither arbitrary nor capricious. Harvey E. Yates Co., 71 IBLA 134 (1983); Kerr McGee Corp., 6 IBLA 108 (1972), *aff'd*, Kerr-McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

^{3/} We note that appellant did not rely on BLM justifications when formulating its bids; therefore appellant should be able to establish that its own bid is a reasonable reflection of fair market value. Viking Resources Corp., 80 IBLA 245, 247 (1984).

Appellant has responded with general statements regarding the speculative nature of drilling prospects and the reduction of fair market value amounts as a result of depressed gas prices. Appellant asserted that two nearby sales did not reflect market conditions because they were "offset" acreage. As to the "Pennsylvanian" production used by MMS when evaluating parcel 24, appellant merely asserts that a dry hole and an uneconomical well separate this tract geologically, without tendering any evidence to support that claim. Despite ample opportunity to refute the BLM determinations, appellant has not submitted supporting evidence which would have shown error in the MMS determination or support its contention that its bids reasonably reflected the fair market value at the time the bids were submitted. ^{4/}

We find the record supports the rejection of appellant's bid. Appellant has made no showing that the decision was arbitrary, capricious or based upon inaccurate data. The arguments presented by appellant on appeal are insufficient to overcome the weight which we properly accord to the BLM findings. Harvey E. Yates, supra. Appellant's arguments merely represent one evaluation of the fair market value of the parcels. When the record indicates the decision to reject a bid has been made in a careful and systematic manner, that decision will not be reversed, even though a reasonable difference of opinion regarding fair market value may exist. Dan Nelson, supra at 160.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the New Mexico State Office are affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge.

^{4/} We note, however, that had appellant presented specific evidence to support its contentions, it may have overcome the BLM's case, in view of the paucity of Government calculations in the record. See Read & Stevens, supra at 393. See e.g., Amoco Production Co., 71 IBLA 241 (1983); Vierson & Cochran, 67 IBLA 1 (1982).